

08/27/1980

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### CLOSING AGREEMENT

THIS CLOSING AGREEMENT (this "Agreement") is by and between the CRYSTAL EXPLORATION AND PRODUCTION COMPANY, a subsidiary of the CRYSTAL OIL COMPANY ("Crystal") and THE ANACONDA COMPANY ("Anaconda").

### RECITALS

A. Crystal and Anaconda have this day closed the sale and purchase of substantially all the assets of Crystal in Dolores County, Colorado, including the assets of the Rico Argentine Mining Company, a division of Crystal.

B. The parties hereto desire to set forth their understandings concerning certain matters relating to the transaction.

### AGREEMENT

In consideration of the Recitals, the sale and purchase of Crystal's assets, and the execution and delivery of several deeds, it is hereby agreed as follows:

1. Paragraphs 3(e) and 5(g) of the June 17, 1980 Purchase and Sale Contract ("Contract") provide that Crystal must comply with the requirements of the Colorado Bulk Transfers Act, Colo. Rev. Stat. (1973) §§4-6-101 et seq. Paragraph (3) of the Contract provides that Anaconda must provide the statutory notice to Crystal's creditors at least ten days prior to the transfer. It is agreed by and between the parties hereto that compliance with the requirements of the Bulk Transfers Act be waived and that, in consideration of such waiver, Crystal shall indemnify and hold harmless Anaconda against and in respect of any and all actions, suits, proceedings, claims or demands by the creditors of Crystal arising by virtue of this waiver. Said agreement is reflected in a letter from Crystal to Anaconda dated August 27, 1980 and entitled "Waiver of Colorado Bulk Sales Act Requirements."

2. It is understood that the NPDES Discharge Permit (No. CO-0029793) issued by the Colorado Department of Health and held by the Rico Argentine Mining Company should be transferred to Anaconda at or shortly after the closing date. The parties have agreed to the following procedure, which is in accordance with certain provisions set forth in the permit, in order to secure its transfer: Crystal has notified the permit transferee, Anaconda, of the permit transfer by letter agreement duly signed and executed by an appropriate Crystal officer. The permit transfer date has been established as August 27, 1980 or as soon thereafter as possible consistent with state and federal law. Said letter complies with the notice requirements set forth in the permit itself and in the applicable Colorado NPDES regulations. The parties have also executed an "Application for Transfer and Acceptance of Terms of NPDES Permit" as required by the Water Quality Control Division of the Colorado Department of Health.

In the event it is subsequently determined that the "permit-transfer" provisions of EPA's Consolidated Permit Regulations, 40 C.F.R. Part 122 (45 Fed. Reg. 33418 et seq.), apply to the transfer of an existing state discharge permit issued by the Colorado Water Quality Control Division, Crystal and Anaconda hereby agree to comply with those provisions including the submission of any necessary forms or applications and further agree to take any additional steps necessary to effect the transfer of the permit to Anaconda.

3. It is understood by the parties that the Colorado Water Quality Control Division (CWQCD) may be contemplating the imposition of compliance requirements on and/or the commencement of enforcement actions against the owner-operator of certain mining facilities, namely a mill located on a tributary of the Dolores River known as Silver Creek

and two tunnels known as the Blaine Tunnel and the St. Louis Tunnel, generally located along or near the Dolores River in Rico, Colorado as a result of certain NPDES permit violations alleged to have occurred at these facilities. The present owner-operator of these facilities is the Rico Argentine Mining Company. In recognition of the fact that the NPDES permit covering these facilities (i.e., No. CO-0029793) will be transferred to Anaconda on or shortly after August 27, 1980, the parties hereto have agreed, with respect to all possible liabilities associated the alleged permit violations, as follows:

a) If any criminal or civil penalties are assessed against the owner-operator of the above-mentioned facilities pursuant to Sections 25-8-608 or 25-8-609 of the Colorado Revised Statutes (1973), or pursuant to Sections 309(c) or 309(d) of the Federal Clean Water Act, and if such penalties are based on permit violations occurring before August 27, 1980, Crystal shall be liable for said penalties and shall be responsible for payment of such penalties to the appropriate state or federal agency; provided, however, that in no event shall Crystal's liability for the penalties or any other costs exceed thirty thousand dollars (\$30,000.00). If, for any reason, the penalties and costs imposed as a result of such violations exceed thirty thousand dollars, Anaconda shall be liable for such excess. Crystal shall not be liable for any penalties or costs imposed as a result of violations which occur after August 27, 1980, even if the NPDES permit presently held by the Rico Argentine Mining Company has not been effectively transferred to Anaconda by that date.

b) Crystal covenants and agrees that it will provide Anaconda with such "administrative" assistance as Anaconda may require in responding to, or resolving any disputes or requests, orders or actions brought or issued by

the Colorado Department of Health or EPA in connection with any permit violations alleged to have occurred before August 27, 1980. Such assistance may include supplying information relevant to the alleged violations to appropriate agencies or negotiating with said agencies. Crystal shall have the right to refuse to provide assistance if it determines in good faith that such assistance would pose significant financial or administrative burdens.

(c) Anaconda shall be solely and fully responsible for any and all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA, including, without limitation, clean-up orders or the installation of pollution control facilities, devices, plans or programs. In no event shall Crystal be liable for or subject to, either directly or indirectly, any such compliance costs or requirements.

4. With respect to the International Flatbed Truck, identified by Crystal Equipment Number 49019, for which no Colorado Certificate of Title exists, Crystal has agreed to take the steps necessary to obtain such a Certificate of Title. The procedures for obtaining a Colorado Certificate of Title have been initiated and, by letter dated August 27, 1980, Crystal has acknowledged its intention to assign and deliver the Colorado Certificate of Title to the truck to Anaconda once the said Certificate is obtained.

5. Crystal and Anaconda have agreed, in light of the uncertainty surrounding the nature of Crystal's right, title and interest in and to certain of the properties contracted to be sold, including certain town lots, patented and unpatented claims and water rights, to modify the nature and extent of the warranties and deeds under which the properties are to be conveyed.

a) The June 17, 1980 Contract requires Crystal to execute, acknowledge and deliver a special warranty deed

in substantially the form of an exhibit attached to the Contract and identified as "Exhibit E." The warranty set forth in the Exhibit E "Mining Deed" is essentially a general warranty. The parties hereto hereby agree that certain of the real property described in Schedules 1, 2, 3, 4 and 5 to be sold under the Contract shall be conveyed by a bargain and sale deed and that Crystal shall extend special warranties to only those properties described in Schedules 1, 3 and 4 with the exception that special warranties are not extended to the mineral rights underlying the following properties listed in Schedule 4: Block 2, Lot 16; Block 19, Lots 6, 7, 8, 9, 11 and 12; Block 10, Lots 30 through 40; Block 11, Lots 1, 2, 12, 27, 28, and 34; Block 15, Lot 33; and, Block 24, Lots 33 through 36. Said schedules are all attached to the deed executed, acknowledged and delivered on August 27, 1980 and referred to as a "Mining Deed." Anaconda hereby agrees that it will provide written notice of such exceptions to Crystal's special warranties to any subsequent purchaser of any of the properties listed in this paragraph.

b) The Contract requires that all personal property, the data and drill core and that portion of the dumps and tailings not effectively conveyed by the Mining Deed be conveyed by a Bill of Sale in substantially the form of an exhibit attached to the Contract and identified as "Exhibit F." Since a Bill of Sale in the form of Exhibit F would, if executed, acknowledged and delivered, convey certain real as well as personal property, the parties have agreed that the Bill of Sale to be executed, acknowledged and delivered by Crystal shall be modified so as to convey only personal property, data and drill core and that portion of the dumps and tailings considered to be personal property under Colorado law.

c) It is understood that title to some of the property to be sold and purchased under the terms of the

Contract is vested in the Rico Development Co., Inc. By letter dated August 15, 1980, Anaconda indicated its willingness to accept a conveyance of such properties directly from Rico Development Co., Inc. and to forego a requirement that title pass through Crystal Exploration and Production Company. Anaconda made this acceptance contingent upon the occurrence of two events: first, that Crystal deliver a deed executed and acknowledged by the Rico Development Co., Inc., conveying all Rico Development Co., Inc.'s right, title and interest in the properties shown by Anaconda's title examination to be owned by Rico Development Co., Inc., and; second, that Crystal agree in writing to extend the same warranties contained in the Mining Deed to the property conveyed by the Rico Development Co., Inc. Deed and that such warranties would be enforceable against Crystal without regard to the fact that title to the properties had not passed through Crystal.

Crystal has agreed to the terms proposed by Anaconda. Any property shown to be held by Rico Development Co., Inc. shall be conveyed directly to Anaconda by deed, in recordable form, executed and acknowledged by Rico Development Co., Inc. Crystal has further agreed that the warranties covering the properties conveyed under the deed from Rico Development Co., Inc. shall be enforceable against Crystal even though the property was conveyed by Rico Development Co., Inc. directly to Anaconda.

d) The parties have agreed that any remaining property of Crystal in Dolores County which is not conveyed by the Rico Development Co., Inc. deed or <sup>the</sup> Mining Deed, or by the Bill of Sale, shall be conveyed by a separate Quitclaim Deed.

e) Paragraph 5(g) of the Contract provides that the representations and warranties set forth elsewhere in the Contract shall survive the closing of the transaction. Since the parties have agreed to modify the warranties

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provided for in the Contract and since the effect of Paragraph 5(g) in its present form is to continue in force and effect those representations and warranties in their unmodified form beyond the closing date, said paragraph is inconsistent with the intent of the parties. It is agreed by the parties hereto that Paragraph 5(f) shall be considered to be modified in accordance with Section 1 above, and with a letter agreement dated August 27, 1980 entitled "Waiver of Colorado Bulk Transfers Act Requirements"; and, that Paragraph 5(c) shall be considered to be modified so that the warranties thereunder are limited to those set out in the Mining Deed executed, acknowledged and delivered on August 27, 1980; and that, as so modified, the representations and warranties set forth in Paragraph 5 shall survive the closing.

6. Anaconda is aware of certain conflicts in and about the Rico Townsite which affect certain properties described either on Schedule 4 to the Mining Deed or on Exhibit "A" to the separate deed from Rico Development Co., Inc. It is agreed by the parties hereto that the "by, through and under" warranty contained in the mining deed or in the Rico Development Co., Inc. deed shall not extend, in any event, to any of the conflicts described below:

a) With respect to Block 18, Lot 25, Block 19, Lots 35 and 36, and Block 20, Lots 29 and 30 (an unsubdivided area) a conflict exists with Mr. Kendrick, who claims some right in or under these lots pursuant to Treasurer's Deeds. Moreover, in Block 20 there may be a conflict with respect to the minerals underlying Lots 23-27.

b) With respect to parcel No. 026 of the Atlantic Cable Subdivision, a conflict exists with Messrs. Olsen and Kelnhafer, involving an improvement which apparently intrudes on to that parcel from Block 23, Lot 5. This conflict apparently is by way of an encroachment from the Olsen and Kelnhafer property on to the subject lot.

c) The Atlantic Cable Subdivision boundary was apparently incorrectly drawn such that portions of Block 24,

Lots 35 and 36, owned by Mr. Sheridan, are inadvertently included within that Subdivision.

d) Lot 34 of Block 24 is a lot owned by Rico Argentine Mining Company on which is located the Catholic Church building.

e) Lots 1 through 4 of Block 25 are the subject of a conflict with the Stampfel Estate, which apparently claims some interest under Treasurer's Deeds. Block 16, Lot 26 and Block 19, Lots 1 through 5 are also subject to conflicts with the Stampfel Estate, and the Rio Grande and Southern Railroad right-of-way acquired by Rico Argentine Mining Company through the Railroad Receiver's Deed may be subject to a conflict, as said right-of-way crosses the Dolores Placer owned by the Stampfel Estate.

f) With respect to Block 12, Lots 37 through 40, a conflict exists with Messrs. Litton and Gilbreath as to the West 25 feet of each lot. These two individuals claim an interest in the West 25 feet of each of these lots by some instrument of conveyance which apparently contains an erroneous description.

g) With respect to Block 12, Lots 37 through 40, one of the deeds in Rico Argentine's chain of title to these lots incorrectly refers to the "East 25 feet" rather than the "West 25 feet," and to the "West 75 feet" instead of the "East 75 feet" of said lots.

h) Block 14, Lots 13 through 16 have been conveyed by Rico Development Co., Inc., but the deed confirming that conveyance has not yet been recorded by the purchaser.

i) With respect to Block 2, Lots 16 and 17, there is a conflict with Mr. Pettingill, a portion of whose house and fence is located on these lots and who claims an interest in the minerals under these lots.

j) With respect to Block 9, "Lots" 17 through 19 (an unsubdivided area), a conflict exists with Mr. Pyle who claims some right in these "lots" pursuant to a deed. These



"lots" conflict with a portion of the New Year Lode Claim within the Rico Townsite.

k) The Thompson Tract is to be sold under a pending contract of sale with Edward Merritt, and is currently being resurveyed because of a problem created by reliction of the Dolores River.

l) In County Deed at Book 95, Page 600, and Treasurer's Deed at Book 104, Page 161, the county and the treasurer conveyed the surface only to the following properties within the Townsite, and some question exists as to ownership of the oil, gas and minerals under these lots, to wit:

Block 2, Lot 16

Block 19, Lots 6, 7, 8, 9, 11 and 12

Block 10, Lots 30 through 40

Block 11, Lots 1, 2, 12, 27, 28, 33 and 34

Block 15, Lot 33

Block 24, Lots 33, 34, 35 and 36.

7. As evidenced by Paragraph 2 of the letter agreement effective as of June 17, 1980, modifying the terms of the Contract, the parties are aware that the closing of this transaction is not contingent on approval by the Colorado Public Utilities Commission of the transfer of the assets of the Rico Telephone Company to Anaconda. Crystal and Anaconda have agreed that Crystal will conditionally transfer and assign all right, title and interest in the assets of the Rico Telephone Company to Anaconda at closing by the Quitclaim Deed and Bill of Sale dated August 27, 1980. The parties are aware that said transfer and assignment is subject to the written approval of the Colorado Public Utilities Commission. The parties agree to cooperate in taking the necessary steps to secure the approval of the Public Utilities Commission of Colorado as expeditiously as possible.

The parties further agree that in the event the Public Utilities Commission fails to authorize the sale of the assets of the Rico Telephone Company, or fails to approve the continued operation of said company after consummation of the sale transaction, then said transaction shall be rescinded and all right, title and interest in the assets of the Rico Telephone Company shall revert to Crystal.

8. Crystal has agreed to transfer and assign to Anaconda all right, title and interest of Crystal in the names "Rico Telephone Company," and "The Rico Telephone Company," together with all good will associated therewith. However, it is understood that such transfer and assignment shall not be effective unless and until the Public Utilities Commission of Colorado approves the transfer of the assets of the Rico Telephone Company from Crystal to Anaconda.

9. With respect to the requests directed to Anaconda from the Mined Land Reclamation Division ("Division") of the Colorado Department of Natural Resources to conduct an inventory of inactive mines on the property presently belonging to the Crystal Exploration and Production Company, the parties have agreed that it would be inappropriate for Anaconda to grant permission to the Division to inspect Crystal's property and that it would be more appropriate for both Crystal and Anaconda to refuse to grant the Division permission to enter the land to conduct the inventory until after the date on which the transaction has been closed. Once the transaction has been closed, Anaconda will own the property on which inactive mines are allegedly located and will have full authority to grant or deny entry to the Division, and to control the conditions of entry.

10. Paragraph 2 of the Contract provides that Anaconda will deliver to Crystal at closing a check covering the sales tax due on the personal property conveyed by Crystal to Anaconda. The parties have agreed, since titled vehicles

are separately taxed for purposes of the Colorado Sales Tax at the time a new Certificate of Title is requested, that Anaconda will be responsible for paying all sales tax due on the vehicles for which a Certificate of Title exists and that Anaconda will pay such tax at the time it registers the vehicles and requests a new Certificate of Title. With respect to vehicles for which no title exists, the taxable value of such vehicles has been added to the Personal Property Inventory and the sales tax will be paid at closing.

11. It is understood by the parties hereto that during the August, 1979 exchange of properties between Crystal and the Town of Rico the surface rights to a small parcel of land, identified as the East twenty feet of Lots 5 through 20, Block 28, Rico Townsite, were erroneously omitted in the conveyance from Crystal to Rico. Since Crystal still owns these lands, all right, title and interest thereto will pass to Anaconda under the Mining Deed. Anaconda hereby agrees that, subsequent to consummation of this transaction, it will deliver to the Town of Rico its quitclaim deed, in substantially the form of the attached Item A, conveying the surface rights only in this parcel, more particularly described as the East 20 feet of Lots 5 through 20, Block 28, Rico Townsite, also being within the N.W. 1/4 of Sec. 36, T. 40 N., R. 11 W., N.M.P.M.; Dolores County, Colorado, and containing 8,000 square feet, more or less.

12. Crystal and Anaconda agree, with respect to the following matters which may be pending or continuing subsequent to the closing of this transaction, that:

a) Anaconda shall have no obligation with respect to the dispute with Mr. Pettingill concerning Lot 16 of Block 2, which lot is owned by the Rico Development Co., Inc. The surface rights to said lot will not be conveyed to Anaconda and, in the event it is determined the surface rights to this lot have passed to Anaconda, Anaconda hereby covenants and agrees that it will upon request, without

additional consideration, deliver to Crystal its quitclaim deed conveying the surface rights to said lot to Crystal.

b) Anaconda shall have no obligation to defend any breach of warranty action or other action which may be brought by a purchaser of Lot 17 of Block 15 on the ground that the Rico Community Church building is located on the North 20 feet of said lot.

c) Crystal shall have no further obligation with respect to any quiet title actions pending or to be filed in Dolores County in which it has been named as plaintiff, and Crystal shall be removed as a party of record. Anaconda shall have the discretionary right to determine whether to continue the quiet title actions as a party of record.

d) Crystal shall not be subject to any other obligations or responsibilities with respect to the properties involved in this transaction subsequent to closing, except as otherwise specified in this Closing Agreement.

IN WITNESS WHEREOF, the parties have executed this Closing Agreement at Denver, Colorado on this 27th day of August, 1980.

CRYSTAL EXPLORATION AND  
PRODUCTION COMPANY

By 

THE ANACONDA COMPANY

By   
James L. Mc...  
Vice President